



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matters of Louis Di Paolo, *et al.*, Department of the Treasury

Classification Appeals

CSC Docket Nos. 2018-2644, *et al.*

ISSUED: SEPTEMBER 7, 2018 (HS)

Louis Di Paolo, William Henry and Christie Neve appeal the determinations of the Division of Agency Services (Agency Services) that their positions with the Department of the Treasury are properly classified as Conferee 1, Taxation. They seek Conferee 2, Taxation job classifications in this proceeding. These appeals have been consolidated due to common issues presented.

The record in the present matters establishes that at the time of their requests for a classification review in late 2017, the appellants were permanent in the title of Conferee 1, Taxation. Their positions were assigned to the Division of Taxation, Office of Counsel Services, Conference and Appeals Branch. Agency Services received the appellants' requests and performed a review of all submitted information, including Position Classification Questionnaires (PCQs) and Performance Assessment Reviews (PARs).

On his PCQ, Di Paolo indicated that for 10% of the time, he completed initial reviews of cases and complaints, "usually includ[ing] multiple issues and cover[ing] multiple periods," to determine the merit of the taxpayer's allegations, after complaints are filed in Tax Court on an assessment, refund denial or other issue; for 30% of the time, he prepared cases for court; for 10% of the time, he was present and involved at court proceedings; for 20% of the time, he prepared case settlement agreements and closing agreements, including in some cases that have gone to court and are returning to the Division of Taxation where the complexity is "generally greater than cases worked by a Conferee 1;" for 20% of the time, he performed research; for 5% of the time, he performed miscellaneous duties; and for 5% of the

time, he performed case maintenance and reporting duties. Di Paolo further indicated on his PCQ that he “occasionally supervise[d].” Specifically, he indicated that he assigned tasks to, and reviewed the work of, individuals serving in the titles of Auditor 3 and Technical Assistant 2 respectively. He noted that he was not responsible for the preparation of performance evaluations. On Di Paolo’s PAR, it was noted that one of his major job responsibilities was to conduct informal administrative hearings on an as needed basis and that the “difficulty/complexity of the cases typically assigned to [him] is average to more complex in nature.”

On his PCQ, Henry indicated that for 60% of the time, he conducted administrative conferences entailing “the most difficult and complex cases involving gross income tax issues,” cases that are of “significant importance and difficulty;” for 25% of the time, he took the lead in assisting other Conferees; for 5% of the time, he conducted significant research in order to review his complex files and assist other Conferees; and for 10% of the time, he worked with Deputy Attorneys General on complex legal proceedings and testified before the Tax Court regarding gross income tax cases as required. Henry further indicated on his PCQ that he did not supervise. On Henry’s PAR, a minimum number of cases to be completed during the rating period was noted. It was also noted that the minimum number of cases completed “may be adjusted based on: the assignment of cases with multiple protested issues, complex issues or matters requiring time intensive review of documents” and that cases will be assigned to him “based on [his] area of expertise, [his] exposure to the protested tax and [his] abilities.” Henry was assigned cases “which varied level of difficulty” during the interim rating period.

On her PCQ, Neve indicated that for 10% of the time, she completed initial reviews of cases and complaints, which include multi-issue, multi-tax period and multi-entity and which mostly involve significant dollar amounts, to determine the merit of the taxpayer’s allegations after complaints are filed in Tax Court on an assessment, refund denial or other issue; for 40% of the time, she prepared cases for litigation, including the review of court complaints on complicated corporation business tax cases and discussions often involving explaining complicated multi-entity corporate structures, inter-company transactions, ownership of partnership interest, *etc.*, as well as complicated tax calculations on the returns and/or supporting schedules; for 15% of the time, she was present and involved at court proceedings; for 20% of the time, she prepared case settlement agreements and closing agreements, including in some cases that have gone to court and are returning to the Division of Taxation where the complexity and/or dollar amount are “greater than what a Conferee 1 would work on;” for 5% of the time, she performed research; for 5% of the time, she performed case maintenance and reporting; and for 5% of the time, she performed miscellaneous duties. In an attachment to her PCQ regarding her responsibilities to assign and review work, Neve stated that she assigned duties to various individuals serving in the titles of Auditor 1, Auditor 2, Auditor 3, Conferee 1, Taxation and Conferee 2, Taxation and

had the responsibility to ensure that many employees timely perform specific tasks in order to meet court deadlines and to verify that their work is complete and accurate. On Neve's PAR, it was noted that one of her major job responsibilities was to conduct informal administrative hearings on an as needed basis and that the "difficulty/complexity of the cases typically assigned to [her is] average to more complex in nature."

In its February 6, 2018 determinations, Agency Services noted that the title of Conferee 2, Taxation is used as a primary level supervisory title and is assigned to the "R" Employee Relations Group (ERG). Agency Services further noted that in *In the Matter of Rosemary Lynne Gash* (CSC, decided April 19, 2017), the Civil Service Commission (Commission) upheld that the standard required to classify titles assigned to the "R" ERG is that the position must supervise three or more lower level employees, including the preparation and signing of their PARs. Since the appellants' positions were not responsible for supervising three or more lower level employees under the organizational structure, Agency Services determined that their positions were not functioning as primary level supervisors and that the duties and responsibilities of their positions were commensurate with their permanent title, Conferee 1, Taxation.

On appeal to the Commission, the appellants note that the definition section of the job specification for Conferee 2, Taxation contained no reference to supervision at the time of their requests for a classification review. They maintain that their positions are better classified by the title of Conferee 2, Taxation. Henry states that the work he does includes more complicated cases. The appellants question how their work could have been adequately understood when no additional interviews were performed. Di Paolo and Neve note that the definition of "desk audit" in their collective bargaining agreement appears to require that the classification reviews include an interview.

It is noted that in *In the Matter of Tina Elbertson and Allison Sheppard* (CSC, decided March 9, 2017), which was decided prior to *Gash*, the Commission stated that the Conferee 2, Taxation title is assigned to the "R" ERG and that titles are assigned to ERGs based on the classification of the position by this agency. See *N.J.S.A. 11A:3-1*. The Commission noted that each ERG is distinctly defined, and the "R" ERG is defined as those titles used in the primary level of supervision. A factor in the Commission's setting the compensation for "R" titles is that employees in this bargaining unit all have the authority to recommend hiring, firing and disciplining of employees. It was additionally noted that classifying employees in a title in the "R" ERG without performance evaluation responsibility for at least one subordinate could create a conflict of interest between primary supervisory staff and subordinate staff being represented by the same bargaining unit. The Commission has long defined a supervisor as an incumbent who is responsible for performing performance evaluations of subordinate staff. Therefore, as Elbertson and

Sheppard did not sign subordinate PARs for at least one Conferee subordinate, the Commission found that their positions could not be classified as Conferee 2, Taxation. Also, since the Conferee 2, Taxation title is assigned to the “R” ERG, the Commission ordered Agency Services to review and modify the job specification and Examples of Work for the title to make it consistent with its decision and make any other modifications it deemed necessary.¹

CONCLUSION

N.J.A.C. 4A:3-3.9(e) states that in classification appeals, the appellant shall provide copies of all materials submitted, the determination received from the lower level, statements as to which portions of the determination are being disputed, and the basis for appeal. Information and/or argument which was not presented at the prior level of appeal shall not be considered.

The definition section of the job specification for Conferee 2, Taxation currently states:

Under direction of a Supervising Auditor, Taxation, or other supervisory official in Division of Taxation, Department of the Treasury, conducts administrative conferences entailing complex tax issues of significant importance and difficulty involving taxpayer’s protests of tax determinations made on behalf of the Director, Division of Taxation; prepares reports and final determinations on protested tax matters; performs with and takes lead over lower level Conferees in preparation of reports and determination recommendations; does related technical work as required.

The definition section of the job specification for Conferee 1, Taxation states:

Under direction of a Conferee 2, Taxation or other supervisory official in Division of Taxation, Department of the Treasury, conducts administrative conferences entailing substantive tax issues of importance and difficulty involving taxpayer’s protests of tax determinations made on behalf of the Director, Division of Taxation; under direction, prepares reports and determination recommendations on protested tax matters; does related duties as required.

Initially, it must be noted that as explained in its decision in *Elbertson and Sheppard, supra*, the Commission has already determined that the title of Conferee 2, Taxation is supervisory. In that decision, the Commission also ordered Agency Services to review and modify the job specification for the Conferee 2, Taxation title

¹ Agency Services advises that it is undertaking the ordered review and revision of the job specification for Conferee 2, Taxation.

to make it consistent with the decision and make any other modifications it deemed necessary. Agency Services advises that it is undertaking the ordered review and revision of the job specification for Conferee 2, Taxation. As also noted in *Elbertson and Sheppard, supra*, the Commission has long defined a supervisor as an incumbent who is responsible for performing performance evaluations of subordinate staff. Performance evaluation authority is a reasonable standard because it is the means by which it can be demonstrated that a supervisor can exercise his or her authority to recommend hiring, firing and disciplining of subordinate employees. Simply stated, the actual authority and exercise of performance evaluation of subordinate staff is what makes a supervisor a supervisor. See *In the Matter of Alexander Borovskis, et al.* (MSB, decided July 27, 2005). See also *In the Matter of Timothy Teel* (MSB, decided November 8, 2001) (It was determined that the **essential component** of supervision is the responsibility for formal performance evaluation of subordinate staff). In this regard, only the individual who signs the evaluation as the supervisor can be considered to have the ultimate decision-making responsibility for that subordinate's rating. Therefore, as the appellants did not sign subordinate PARs at the time of the classification reviews, their positions cannot be classified as Conferee 2, Taxation. See *In the Matter of Joshua Brown, et al.* (CSC, decided November 18, 2015). See also *In the Matter of Dana Basile, et al.* (CSC November 5, 2015).

Moreover, even if these matters are reviewed against the unmodified job specification for Conferee 2, Taxation, the record still supports that the appellants' positions are properly classified as Conferee 1, Taxation. The information submitted to Agency Services reflects that each appellant's position includes responsibility for some complex work. However, the fact that the appellants' positions perform some complex work is not evidence of misclassification as it is not uncommon for an employee to perform some duties that are above or below the level of work that is ordinarily performed. Moreover, the Conferee 1, Taxation title performs work entailing substantive tax issues of importance and difficulty. As such, this is not a low level professional title but has responsibility for dealing with substantive issues of importance and difficulty.² In short, the record does not present a compelling basis to find that, from an overall classification standpoint, the appellants' positions are misclassified in the title of Conferee 1, Taxation.

As to the appellants' complaint that no additional interview was conducted, classification reviews are typically conducted either by a paper review; an on-site audit with the employee and supervisor; or a formal telephone audit to obtain clarifying information. The chosen method in this case was a paper review, which is a valid way of collecting information about a position and is not by any means

² In the case of the positions encumbered by Di Paolo and Neve, reclassification would be unwarranted for the additional reason that the record does not support that their positions perform with and take the lead over lower level Conferees in the preparation of reports and determination recommendations on a regular basis.

considered to be inadequate or improper. The appellants' dissatisfaction with the method of classification review does not affect the validity of the reviews. A thorough review of the information presented in the record establishes that the appellants' positions are properly classified as Conferee 1, Taxation, and they have not presented sufficient bases to establish that their positions are improperly classified.

ORDER

Therefore, it is ordered that these appeals be denied, and the positions of Louis Di Paolo, William Henry and Christie Neve are properly classified as Conferee 1, Taxation.

This is the final administrative determination in these matters. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 5TH DAY OF SEPTEMBER, 2018



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